APPENDIX A

[SEAL]

RCS:mkh

U.S. Department of Justice
Organized Crime & Racketeering Section
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Washington, D.C. 20530

July 7, 1981

Honorable Frederick B. Lacey
United States District Judge
Post Office & Courthouse
Newark, New Jersey 07102

Honorable Sir:

The following information is submitted in order to supplement the record of the proceedings on July 1, 1981.

This case has undergone a rather substantial metamorphosis since the indictment was returned over twenty-one months ago. The principal defendant, Ruggerio Boiardo, has been adjudged to be unfit to stand trial and cannot be prosecuted. A second defendant of importance, Philip Leone, has also been adjudged to be physically unfit to stand trial. A third important defendant, Vito Montemarano, has since been convicted in State court and, at age forty, is serving a prison sentence of some thirty-three (33) years. Thus, by late 1980, the case had been reduced, for practical purposes, to the three businessmen, who permitted the Russo Brothers and Boiardo to infiltrate their casino venture in Las Vegas.

As the case progressed, counsel for both sides entered into plea negotiations. By late January of 1981, a plea

agreement, similar to the instant proposal, was under very serious consideration by all parties. However, those negotiations broke down, as the case was wending its way through the appellate courts over the issue of representation. In late March of 1981, following the Third Circuit's decision, the plea negotiations were revived.

Since then, the negotiations have involved a new and rather significant aspect. On April 17, 1981, the three defendants submitted themselves to some five hours of questioning by investigators and prosecutors. Thereafter, Mr. Bendetti volunteered to meet with a group of agents from several offices in order to answer various questions. It should be noted that those sessions did not alter the Government's view about the merits of the instant prosecution nor about the guilt of the accused nor about the likelihood of obtaining a conviction at trial. The Government's position on these matters has remained exactly as it was at the date of indictment, and there has been no lessening of the Government's resolve to see that this matter is prosecuted to a satisfactory resolution.

What the several sessions did provide was a more precise factual basis with which to evaluate such factors as (a) the defendants' history (or, more particularly, lack thereof) with respect to other criminal activity, (b) the relative seriousness of their participation in the offense as opposed to that of the other participants, (c) their very substantial remorse and contrition, (d) their avowed willingness to assume responsibility for their conduct, and (e) factors in mitigation that might well influence a probable sentence following a conviction. All of these are relevant factors for prosecutorial consideration in evaluating the merits and formulating the specifics of a plea agreement. It has been this constellation of factors—together with such appropriate considerations as the desirability of a prompt and certain disposition of the case, and the very considerable expense which an estimated eight to ten week trial and the resulting appeals would

necessitate—which persuades the Government that the proposed disposition is appropriate.

The propriety of Rule 11(e)(1)(C) plea agreements, which seek to resolve every detail of a disposition, was established in 1975 with the revision of Federal Rule 11. The parties herein have availed themselves of the provisions of the amended Rule because the instant plea agreement involves a rather intricate and delicately constructed mosaic of interlocking provisions. These are designed to punish the defendants for the instant offense, to promote their rehabilitation, to prevent any future repetition on their part and to serve as deterrent to others who might otherwise be inclined to engage in similar conduct. While the Government considers that the package as proposed addresses adequately each of these desideratum, the ommission or alteration of any one component would substantially alter the overall desirability of the proposed disposition and render it unacceptable to the Government.

In evaluating the various considerations, the Government has been mindful of the fact (as established by both the Government's evidence and the results of the interview sessions) that it was the Russio-Boiardo element which insinuated itself into these defendants' business venture. In contrast to the activities of the Russo-Boiardo group, these defendants did not engage in extortionate-type conduct, nor did they embark upon any grand design to form and implement a ubiquitous venture which would pervade and pervert the entire fabric of the gaming industry. As to them, there is no organized crime network to be dismantled.

They did, however, conspire to evade and defeat the revenue and casino regulatory laws of the State of Nevada, and they did this in order to gain an economic advantage. The terms of the proposed plea agreement are carefully tailored to redress that particular situation. First, the guilty pleas vindicate the legitimate state in-

terest in maintaining the efficacy of the legalized gambling regulatory system as well as the overall federal interest in preventing the illegal use of interstate facilities in derogation of such a state regulatory system. Secondly, the imposition of five year jail sentences with execution suspended and maximum terms of probation protects the public's general interest in discouraging recividist behavior by Bendetti and Mastro, who were the Jolly Trolley's principal operating officers in Las Vegas. Thirdly, the regulatory systems of states such as Nevada and New Jersey are further protected by the terms of the civil judgment. The injunctive relief prohibits these defendants from any future involvement in the legitimate gaming industry—whether in Nevada, New Jersey or anywhere else. This injunctive prohibition has the singularly attractive feature of not being limited in duration, as would be the case with any period of parole or probation. Any breach of the conditions, however slight and whenever occurring, could be punished quickly and economically by a jail sentence. Fourthly, the remedial objectives of the RICO judgment in the form of a $170,000 settlement strips the defendants of the last vestiges of their unjust enrichment and further punctuates the adverse economic consequences flowing from the Jolly Trolley venture. Finally, as a matter of general deterrence, the collective impact of the criminal fines and penalties, together with the civil sanctions, is designed to give pause to any otherwise legitimate businessmen who might contemplate a similar criminal venture.

The Government believes that the proposed probationary terms pursuant to felony pleas by Bendetti and Mastro and the Nevada plea by DeLamos, together with the proposed civil sanctions and remedies, satisfy the multiple objectives of sentencing—while, at the same time, sparing the Government, the Court and the Public the very considerable expense of litigating this matter to a conclusion. Above all, the Government believes that

the proposed plea agreement is balanced, fair and efficacious.

Hopefully, this information will assist the Court in evaluating the merits of the proposed plea agreement. If the Court desires any further information, we will endeavor to provide it.

Respectfully yours,

/s/ Robert C. Stewart
ROBERT C. STEWART
Attorney in Charge

cc: Stephen M. Greenberg, Esq.
Elliott H. Vernon, Esq.
Oscar B. Goodman, Esq.
Frank T. Swain, Esq.
John J. Momet, Esq.
Richard T. Philips, Esq.

APPENDIX B

Transcript of Proceedings in District Court

July 13, 1981

[Caption omitted]

BEFORE:

The Honorable FREDERICK B. LACEY, U.S.D.J.

Appearances:

WILLIAM W. ROBERTSON, United States Attorney
By: WARREN ROBINS, Special Attorney
Department of Justice
For the Government

FRANK T. SWAIN, Esq.
For the Defendant Bendetti

STEPHEN M. GREENBERG, Esq.
For the Defendant Mastro

ELLIOTT H. VERNON, Esq.
For the Defendant DeLamos

RICHARD T. PHILIPS, Esq.
For the Defendant Montemarano

[2] THE COURT: All counsel are present?

MR. ROBINS: All counsel for the government are present, your Honor.

THE COURT: I asked counsel to be here today so I might state for the record my response to the tendered plea agreement.

By letter dated June 30, 1981, and marked at an earlier proceeding as Court Exhibit 1, the United States Attorney advised me of what is stated in this letter to be a "full and complete plea agreement" between the government on the one hand and the defendants Bendetti, DeLamos and Mastro on the other.

While the agreement on its face does not extend to the defendant Montemarano, the government advised me that acceptance of this agreement by the court would lead to dismissal of the case against Montemarano.

The government letter stated that the United States would accept a guilty plea from defendants Bendetti and Mastro to Count 5 [later revised by the court to read Count 6] of the indictment, a count charging a violation of the Travel Act, 18 U.S.C. 1952, carrying a maximum sentence of five years and a $10,000 fine. And the United States would, upon sentencing, then dismiss the remaining counts of the indictment against those defendants, Bendetti and Mastro.

Additionally, the government's position was [3] that "the following specific sentence would be the appropriate disposition." As to both Mastro and Bendetti, there would be a five-year probationary term with a suspended sentence and a $10,000 fine.

Another term of this agreement was that the defendants Mastro, Bendetti and DeLamos would at the time of sentencing enter into a consent judgment in a civil RICO complaint filed by the government "which demands joint and several liability on $170,000 divestiture of profits and a permanent injunction against any further participation in any activities related to casino-gambling enterprise."

Continuing the quote: "The divestiture is to be collateralized and paid in full within two years after entry of the consent judgment."

The letter then dealt with the defendant DeLamos, stating: "It is understood that defendant DeLamos will plead guilty to a complaint pursuant to the Nevada Gaming Control Regulations § 5-46-2:(E), and that, at the time of sentencing on that charge, the government will move for dismissal."

Inquiry by me of counsel when they appeared before me in court drew a response that Mr. Robins had been in touch with an appropriate official in the state of Ne-

vada and that while he had asked what the general run of sanctions was with respect to such an offense, he had not been advised.

[4] Continuing with the agreement further, the letter stated that: "It is further understood that this agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state or local prosecuting authorities, although this office will bring this agreement to the attention of other prosecuting offices, if requested."

The letter concluded with this paragraph: "No additional promises, agreements and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties."

Under date of July 7, 1981, the United States Attorney wrote as follows to me:

[Quoting of letter in Appendix A omitted.]

* * * *

[9] What we have here before me at this time then is, in effect, a submission before a formal submission under Rule 11, and given the view that counsel had taken in submitting this to me in the first place, I think counsel are entitled to have my response as if it had been placed before me formally under Rule 11.

[10] Rule 11 of the Federal Rules of Criminal Procedure, Subdivision E, "Plea Agreement Procedure," reads as follows:

"(1) In General. The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

"(A) Move for dismissal of other charges; or

"(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with

the understanding that such recommendation or request shall not be binding upon the court; or

"(C) Agree that a specific sentence is the appropriate disposition of the case."

Now, we go to (2). "If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in Subdivision (e)(1)(A) or (C), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider [11] the presentence report. If the agreement is of the type specified in Subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant, nevertheless, has no right to withdraw his plea."

Subdivision (4) says: "If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afforded the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement."

In the letter of July 7, 1981, the government states that: "The propriety of Rule 11(e)(1)(C) plea agreements, which seek to resolve every detail of a disposition, was established in 1975 with the revision of Federal Rule 11."

I take it that the government is thus trying to bring to my atention that there is no novelty, thus, in their doing what they did here. My understanding, however, of what Mr. Robins responded to a question I put earlier was that this is a novel procedure for this office.

Has there been a (C) agreement tendered to [12] any judge in this district before?

MR. ROBINS: Your Honor, I believe so. There have been.

THE COURT: Who? To what judge and where?

MR. ROBINS: Judge, I'm under the impression that there was at least one—

THE COURT: At least one?

MR. ROBINS: Yes.

THE COURT: How many criminal cases have you had since 1975, in the hundreds?

MR. ROBINS: Numerous, your Honor.

THE COURT: None were ever so intricate or, to use the phrase in this letter, of such a "mosaic" that a (C) agreement was needed before?

MR. ROBINS: Your Honor, I was not in the office at that time, so I can't answer that question.

THE COURT: Well, you wrote the letter, didn't you?

MR. ROBINS: No, Your Honor, Mr. Stewart did.

THE COURT: All right.

As I've indicated when you gentlemen were in court before me on the first occasion, the abundant files in this case indicate the mighty resistance that the United States posed to every move made by the defendants in the case. The defendants wanted to transfer the case to Nevada and the [13] government opposed this most strenuously. The defendants wanted Mr. Goodman to represent the three of them, telling me that Mr. Goodman was most indispensable, the case could not proceed without their being represented by Mr. Goodman. The government resisted that, of course, and the defendants proved their point up to a point by taking the case to the Court of Appeals and thereafter to the Supreme Court. Needless to say, as we look at counsel table now, Mr. Goodman, the indispensable man, isn't here.

But suffice it to say that this is a turnabout in the government's posture of this case.

Someone brought to my attention that the United States Attorney, when interviewed following the first

meeting that I had with you gentlemen in this court, said, in effect, quote, now it's up to the court, close quote. Well, it doesn't become a matter of being up to the court until the United States Attorney first makes the basic decision to enter a plea agreement under Subdivision (C). And, as I've already intimated in my remarks, this is the very first time of all of the criminal cases placed before me that that office of the United States Attorney of the District of New Jersey has tendered a plea agreement to me. And I've had some very intricate criminal cases which terminated in pleas of guilty and others that, of course, went to trial. But never a (C) plea agreement. [14] I frankly question whether the policy is a good one for law enforcement.

I happen to be on the Advisory Committee of the Supreme Court for the Federal Rules of Criminal Procedure and I'm intimately familiar with all of these rules because I helped draft them. A (C) plea agreement in some districts may be a necessity but I never thought it was a necessity in this district and I still don't think so.

I have seen justice served full well by the kind of count disposition that this office has followed from time immemorial since I've been practicing law in this area. And when I was United States Attorney it worked just as well. And I just don't think it creates a healthy situation. And, again, I reiterate I see no necessity for it and I don't think I'll go beyond that.

So, gentlemen, if you do tender this to me in a formal fashion under Rule 11, which I take it is what the posture is at this time, what would happen if you did, I would reject it.

Now, let me see counsel up here at sidebar, please.

[A discussion is held at sidebar off the record.]

THE COURT: I've been advised that the letter was amended to read "Count 6."

[15] [A discussion is held at sidebar off the record.]

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